

Ross C. Anderson (#0109)
Janet M. Conway (#7488)
LEWIS HANSEN
The Judge Building
Eight East Broadway, Suite 410
Salt Lake City, Utah 84111
Telephone: (801) 746-6300
Fax: (801) 746-6301
randerson@lewishansen.com
jconway@lewishansen.com

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

CINEMA PUB, L.L.C., d/b/a BREWVIES

Plaintiff,

v.

SALVADOR D. PETILOS, Director; CADE
MEIER, Deputy Director; NINA
MCDERMOTT, Director of Compliance,
Licensing Enforcement, Utah Department of
Alcoholic Beverage Control, in their official
capacities; JOHN T. NIELSEN, Chairman;
JEFFREY WRIGHT; KATHLEEN
MCCKONKIE COLLINWOOD; OLIVIA
VELA AGRAZ; STEVEN B. BATEMAN; S.
NEAL BERUBE; AMANDA SMITH,
Members, Utah Alcoholic Beverage Control
Commission, in their official capacities

Defendants.

**AMENDED VERIFIED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Case No.: 2:16-cv-00318-DN

Honorable David Nuffer

Magistrate Evelyn J. Furse

**AMENDED VERIFIED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff Cinema Pub, L.L.C., dba Brewvies ("Brewvies") hereby complains against
Defendants and alleges as follows:

INTRODUCTION

1. This is an action for declaratory and injunctive relief arising from the State of Utah's and the Defendants' unconstitutional censorship and chilling of the freedom of speech of Brewvies and its customers by punishing, and threatening to punish, Brewvies with fines and the threat of suspension or revocation of its liquor license for showing the worldwide highest grossing R-rated film, *Deadpool* and other non-obscene films.

PARTIES

2. Brewvies is a Utah limited liability company that owns and operates the Brewvies Cinema Pub, which is licensed to serve alcoholic beverages and is located at 677 South 200 West, Salt Lake City, Utah. The Brewvies Cinema Pub is a unique business, offering food, alcoholic beverages, and non-obscene films to be enjoyed together by its customers. The combination of offering food, alcoholic beverages, and films, in a business limited to customers 21 years of age and older, is central to the success of Brewvies.

3. Salvador D. Petilos ("Petilos") and Nina McDermott ("McDermott") are employees of the State of Utah and, respectively, the Director and the Director of Compliance, Licensing Enforcement of the Utah Department of Alcoholic Beverage Control ("DABC"). The claims against each are for declaratory and injunctive relief only. They have participated in enforcing the unconstitutional statute, policies, rules, and practices challenged herein and interfering with, and chilling, the exercise by Brewvies of its freedom of speech and expression.

4. John T. Nielsen ("Nielsen"), Chairman, and Jeffrey Wright ("Wright"); Kathleen McConkie Collinwood ("Collinwood"); Olivia Vela Agraz ("Agraz"); Steven B. Bateman ("Bateman"); S. Neal Berube ("Berube"); Amanda Smith ("Smith"), Members, are each agents

and officers of the State of Utah serving as commissioners of the Utah Alcoholic Beverage Control Commission (the “Commission”). The claims against each of them are for equitable relief only. Collectively they are the policy makers and ultimately decision-makers for that Commission and the Utah Department of Alcoholic Beverage Control with regard to the policies, rules, and practices challenged in this action, including decisions regarding whether to proceed with disciplinary actions and whether to impose fines or suspend or terminate liquor licenses. They have collectively adopted and promulgated on behalf of the State of Utah policies, rules, and practices challenged herein, including the enforcement of the unconstitutional statute challenged herein. They ultimately supervise Defendants Petilos and McDermott and have required that Petilos and McDermott comply with the unconstitutional statute, rules, policies, and practices challenged herein.

JURISDICTION AND VENUE

5. This Court has federal jurisdiction over Plaintiff’s claims, pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983, as Defendants have violated the First Amendment of the United States Constitution, as made applicable to the states by the Fourteenth Amendment of the United States Constitution.

6. Venue in this Court is proper under 28 U.S.C. § 1391, as the events complained of occurred in this judicial district and the Defendants reside in Utah.

7. Defendants’ imposition of fines, and the threats of imposing additional fines against Brewvies, and their threats of suspension or revocation of Brewvies’s liquor license as part of Defendants’ enforcement of Utah Code § 32B-1-504, based on Brewvies’s exercise of its constitutionally protected freedom to choose which non-obscene films it will show, has interfered with, and threatens to further interfere with, Brewvies’s rights to show non-obscene films protected

by the First Amendment of the United States Constitution and Article 1, sections 1 and 15 of the Utah Constitution.

8. Defendants' actions have interfered with Brewvies's freedom of speech and expression and threaten to continue to cause serious, perhaps devastating, damage to Brewvies in the form of unconstitutional fines and the destruction of its business based on the non-obscene content of films Brewvies chooses to show, as well as the continuous interference with, and chilling of, Brewvies's exercise of its freedom of speech and expression guaranteed by the First Amendment to the U.S. Constitution and Article 1, sections 1 and 15 of the Utah Constitution.

9. The requested relief from this Court would redress Brewvies's injuries by removing the immediate threats to Brewvies of further fines and the possible suspension or revocation of Brewvies's liquor license, as well as the continued interference with, and chilling of, Brewvies's freedom of speech and expression.

FACTUAL BACKGROUND

10. *Deadpool*, an R-rated film, was released in theaters in the United States on February 12, 2016. Within two months of release, *Deadpool* became the highest grossing R-rated film worldwide.

11. Brewvies showed *Deadpool* to its customers during the period from February 12, 2016, to March 24, 2016.

12. DABC, and Defendant McDermott particularly, signed and sent a Notice of Agency Action (the "Notice") (a copy of which is attached hereto as Exhibit "A"), to Brewvies That Notice was received by Brewvies on April 11, 2016.

13. The Notice signed by Defendant McDermott alleged that, on or about February 23, 2016, Brewvies violated Utah Code § 32B-1-504 (7) (a) and (d) by showing a depiction of (1) an

act or simulated act of sodomy, bestiality, or oral copulation and (2) a scene wherein a person displayed his or her genitals.

14. Utah Code § 32B-1-504 provides, in relevant part:

The following attire and conduct on premises or at an event regulated by the commission under this title are considered contrary to the public health, peace, safety, welfare, and morals, and are prohibited:

(7) showing a film, still picture, electronic reproduction, or other visual reproduction depicting:

(a) an act or simulated act of:

(i) sexual intercourse;

(ii) masturbation;

(iii) sodomy;

(iv) bestiality;

(v) oral copulation;

(vi) flagellation; or

(vii) a sexual act that is prohibited by Utah law;

(b) a person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(c) a scene wherein an artificial device or inanimate object is employed to depict, or a drawing is employed to portray, an act prohibited by this section; or

(d) a scene wherein a person displays the genitals or anus.

15. In the Notice, Defendant McDermott indicated DABC is seeking an order of the Commission invoking the penalty against Brewvies of “a 10 day license suspension up to a revocation of its club license and/or a \$1,000 TO \$25,000 fine” plus administrative hearing costs. The Commission Defendants would make that determination, which, based on past unconstitutional treatment by the DABC Commission of Brewvies, would likely entail a significant penalty, as well as more than one hearing and substantial time and attorneys’ fees incurred by Brewvies.

16. Enclosed with the Notice from Defendant McDermott were two “Crime Reports” from Officers Bradley Bullock and Sean Cannon, both with the Utah State Bureau of Investigation, describing a covert investigation the night of February 26, 2016, during which the two officers entered Brewvies, ordered a Bud Light and watched *Deadpool* to verify the film’s sexual content

and nudity. Officer Sean Cannon, who had, on his own, seen the film two times before, verified the Brewvies showing of *Deadpool* did not “remove or obscure” the sexual content or nudity from the film. (The other officer apparently saw the film once before, on his own.)

17. DABC, through all or some of the Defendants, or through their predecessors, had previously taken unconstitutional action against Brewvies on two separate occasions:

a. In 2011, DABC investigated Brewvies for showing *The Hangover Part II*, which was not “obscene” within the meaning of state or federal constitutional law and was not claimed by DABC to be obscene. The DABC asserted Brewvies violated Utah Code § 32B-1-504 (7) (a) and (d) by “showing a film depicting an act or simulated act of sodomy, bestiality, or oral copulation and a person displaying their genitals.” Brewvies was coerced and intimidated by legal counsel for the DABC and the DABC Commission into agreeing to pay a \$1,500 fine plus the payment of costs, in the total amount of \$1,627.

b. In 2015, DABC, in a threatening email from Margaret K. Hardie, gave informal notice to Brewvies that at least two films “would not be allowed to be shown . . . due to nudity and sexual content.” At that time, the only films being shown at Brewvies were *Magic Mike* and *Ted 2*, neither of which were “obscene” within the meaning of state or federal constitutional law and neither of which were claimed by DABC to be obscene. The email cited and reproduced Utah Code § 32B-1-504. The email stated, “Please make sure you preview all movies you will be showing. This ensures we can keep you from citations or law enforcement referring you for violations against your liquor license.” In other words, the DABC was warning Brewvies not to show films that were constitutionally protected, but which fell within the coverage of the unconstitutional Utah statute, Utah Code Ann. § 32B-1-504(7).

18. Brewvies responded to Margaret K. Hardie's informal notice in a letter dated June 23, 2015. That letter made clear that (1) Brewvies showed only movies that are rated PG, PG-13, and R, (2) the films *Ted 2* and *Magic Mike* were being distributed nationally to over 3200 theaters, (3) Brewvies only admitted patrons older than twenty-one years of age, and (4) Brewvies wished to reach an understanding with the DABC and the Commission such that Brewvies would be permitted to show PG-13 and R rated movies without fear of prosecution or penalties by the DABC or the Commission.

19. DABC responded in a letter from its legal counsel Sheila Page, dated July 23, 2015. That letter made clear that (1) DABC, unequivocally, "will take action" against Brewvies should DABC receive any law enforcement referral that Brewvies provided entertainment in violation of the Alcohol Beverage Control Act and (2) if Brewvies did not wish to face penalties from the DABC then Brewvies's recourse was (a) to screen films for possible violations of Utah Code § 32B-1-504, (b) exercise "the option of being a motion picture theater *without* alcohol service," or (c) approach the Legislature about changing the statute.

FIRST CLAIM FOR RELIEF

VIOLATION OF FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTIONS 1 AND 15 OF THE UTAH CONSTITUTION

DECLARATORY AND INJUNCTIVE RELIEF

20. Brewvies re-alleges and incorporates by reference the factual allegations above as if set forth fully herein.

21. The film *Deadpool* is not obscene, and Defendants and the DABC have not claimed the film is obscene, under applicable constitutional standards. Taken as a whole, the film has serious literary, artistic, political, or scientific value.

22. Brewvies's showing of the film *Deadpool* is protected by the First Amendment of the United States Constitution and Article 1, sections 1 and 15 of the Utah Constitution.

23. Brewvies intends to exercise its freedom of speech by again showing the film *Deadpool* and other non-obscene films that may contain depictions in violation of Utah Code § 32B-1-504, but which are constitutionally protected.

24. Defendants, acting under color of state law, and in the course and scope of their duties as employees or DABC commissioners, deprived and continue to deprive Brewvies of its constitutional rights to freedom of speech by continuing to enforce the unconstitutional Utah statute, Utah Code § 32B-1-504(7), by failing to announce that it will not refrain from enforcing the unconstitutional statute, by punishing and threatening to punish Brewvies with fines and/or the suspension or revocation of Brewvies's liquor license because Brewvies showed the film *Deadpool* or if Brewvies again shows *Deadpool* or other films containing depictions in violation of Utah Code § 32B-1-504, but which are not obscene within the meaning of well-established constitutional law.

25. Brewvies is entitled to a declaration that the Defendants' enforcement, both past and future, of Utah Code § 32B-1-504(7), based on the content of non-obscene films, violates the First Amendment of the United States Constitution and Article 1, sections 1 and 15 of the Utah Constitution.

***ENTITLEMENT TO TEMPORARY, PRELIMINARY, AND
PERMANENT INJUNCTIVE RELIEF***

26. Defendants' unconstitutional actions have irreparably harmed Brewvies by (i) coercing it to choose which films to show based on the content of those films, without regard to obscenity, or face substantial fines and/or the possible suspension or revocation of its liquor license; (ii) imposing and threatening to impose punishments, including fines and/or the possible

suspension or revocation of Brewvies's liquor license, for having shown a non-obscene film, *Deadpool*; and (iii) continuously chilling the freedom of speech of Brewvies in its decisions about what non-obscene films it can show for its customers without incurring the unconstitutional coercion and punishments, or threats of punishment, by the DABC and the Defendants.

27. Defendants' unconstitutional actions will continue to irreparably harm Brewvies by unconstitutionally chilling Brewvies's rights to freedom of speech and expression by coercing Brewvies to choose which films to show based on the content of those films, without regard to obscenity, or face substantial fines and/or the possible suspension or revocation of its liquor license.

28. Brewvies's remedies at law are not adequate to remedy its past and ongoing injuries.

29. Injunctive relief will not cause hardship to anyone, but will protect Brewvies's freedom of speech and expression against unconstitutional punishment and threats of punishment by Defendants and against the infringements by Defendants on, and the chilling of, Brewvies's freedom of speech and expression.

30. Vindication of constitutional freedoms and protection of First Amendment rights is in the public interest.

31. Brewvies is entitled to temporary, preliminary, and permanent injunctive relief prohibiting Defendants from enforcing or threatening to enforce Utah Code § 32B-1-504(7) based on the content of non-obscene films.

PRAYER FOR RELIEF

WHEREFORE, pursuant to the claims for relief set forth hereinabove, Plaintiff is entitled to:

(1) an order declaring that Defendants' past and future enforcement, and threatened enforcement, of Utah Code § 32B-1-504(7) against Brewvies for showing non-obscene films, including the film *Deadpool*, violated and continues to violate the First Amendment of the United States Constitution and Article 1, sections 1 and 15 of the Utah Constitution;

(2) orders granting temporary, preliminary, and permanent injunctive relief prohibiting Defendants from enforcing, threatening to enforce, or otherwise taking action against Brewvies or its liquor license pursuant to Utah Code § 32B-1-504 for showing non-obscene films, including the film *Deadpool*;

(3) an award against Defendants of all reasonable attorneys' fees and costs incurred by plaintiff in this matter, pursuant to 42 U.S.C. § 1988 and any other applicable authority; and

(4) all further relief as deemed just and equitable.

DATED this 8th day of February, 2017.

LEWIS HANSEN

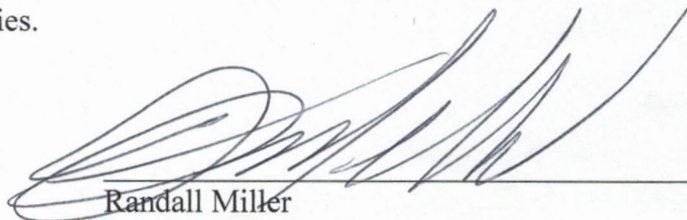
/s/ Ross C. Anderson
Ross C. Anderson (#0109)
Lewis Hansen
Eight East Broadway, Suite 410
Salt Lake City, Utah 84111
Ph: 801.746-6300
randerson@lewishansen.com
Attorneys for Plaintiff

Verification

I, Randall Miller, declare as follows

1. I am over 18 years of age, a resident of the State of Utah, and the managing member of Cinema Pub, L.L.C., d/b/a Brewvies, the Plaintiff in this matter.
2. I have personal knowledge of myself and my activities, including those set out in the foregoing Verified Amended Complaint for Declaratory and Injunctive Relief and if called to testify I would competently testify as to the matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning myself and my activities are true and correct, as are the factual statements concerning the conduct of Plaintiff Cinema Pub, L.L.C., d/b/a Brewvies.

Dated this 31st day of January, 2017

A handwritten signature in black ink, appearing to read 'Randall Miller', is written over a horizontal line.

Randall Miller
Managing Member, Cinema Pub, L.L.C.,
d/b/a Brewvies
677 South 200 West
Salt Lake City, Utah 84101
801.268-1082

EXHIBIT A

STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL

Dear Respondent(s):

You have received a Notice of Agency Action from the Department of Alcoholic Beverage Control(DABC) alleging violations of the *Utah Alcoholic Beverage Control Act*. As counsel to the DABC, I will be representing the agency in this matter. You are welcome to be represented by an attorney in this case, but may certainly represent yourself.

I invite you to contact me regarding the possibility of settling this case prior to the date set for the pre-hearing listed in the Notice of Agency Action. Please call me at 801-366-0219 during the following hours:

Mondays: 9:00 a.m. to 4:00 p.m.

or

Wednesdays: 9:00 a.m. to 4:00 p.m.

If I am temporarily unavailable when you call, please feel free to leave a voice message or ask to speak to Ed Lombard, my paralegal. I look forward to hearing from you.

Sincerely,

SHEILA PAGE

Assistant Attorney General
Counsel to the DABC

96/7466301

BEFORE THE
UTAH ALCOHOLIC BEVERAGE CONTROL COMMISSION

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, COMPLAINANT, V. CINEMA PUB LLC dba BREWVIES RESPONDENT.	NOTICE OF AGENCY ACTION and OF INFORMAL ADJUDICATION and NOTICE OF HEARING Case Number <u>2016-566-L</u>
---	---

Complainant, Department of Alcoholic Beverage Control (hereafter DABC), through its Presiding Officer, Nina R. McDermott, alleges as follows:

1. The DABC is a duly authorized department of the State of Utah.
2. Jurisdiction for this action is based upon Utah Administrative Procedures Act, U.C.A. 63G-4-201, Utah Alcoholic Beverage Control Act 32B-3-204 and R81-1-6 & -7, ABC Commission Rules of Procedure for Disciplinary Action.
3. This Notice of Agency Action is also a notice of an "informal" adjudication under U.C.A. 63G-4-202 & -5.
4. The law enforcement report(s) pertaining to the alleged violations in this Notice of Agency Action is attached.
5. CINEMA PUB LLC dba BREWVIES (hereafter "BREWVIES"), located at 677 S 200 W , SALT LAKE CITY, UT 84101, is a DABC club licensee pursuant to U.C.A. 32B-5, having been granted said license on September 29, 2009.
6. The DABC violation file regarding BREWVIES reflects the following violation history: No prior violations found.
7. The DABC alleges BREWVIES and named respondent/s have committed the following violation(s) of the Utah alcoholic beverage control laws:

Count I:

On or about February 23, 2016, Brewvies, a social club, showed a film, electronic reproduction, or other visual reproduction depicting: (1) an act or simulated act of sodomy, bestiality, or oral copulation, and (2) a scene wherein a person displayed their genitals in violation of Utah Code Section 32B-1-504 (7) (a) and (d).

WHEREFORE, the DABC seeks an order of the Utah Alcoholic Beverage Control Commission invoking the following penalties:

Count I: As to BREWVIES, a 10 day license suspension up to a revocation of its club license and/or a \$1,000 TO \$25,000 fine.

The department also seeks administrative hearing costs.

NOTICE OF HEARING

A pre-hearing conference on this matter will be held at the DABC, 1625 South 900 West, Salt Lake City, Utah 84104 on April 20, 2016 at 10:00AM, or sooner upon request of respondents, to encourage settlement, clarify issues, simplify evidence, or expedite the proceedings. A representative of the licensee and any named employees of the licensee are expected to be in attendance at the pre-hearing conference.

If the case is not settled, the date, time and place of any informal or formal evidentiary hearing will be scheduled at the time of the pre-hearing conference. A respondent may request an adjudicative hearing to determine whether the alleged violations occurred, and if so, the penalties to be imposed. An adjudicative hearing is conducted informally in accordance with Commission Rule R81-1-7 and Utah Code Sections 63G-4-202 and 203 unless the presiding officer converts the matter to a formal proceeding pursuant to R81-1-7(2)(c)(iii) or (iv). The purpose of the hearing is to allow the parties to testify, present evidence and comment on the issues. Failure of a party to attend or participate in any scheduled adjudicative hearing may result in that party being held in default and shall constitute an admission of the allegations contained herein and shall waive the respondent's right to contest the allegations, and the right to the hearing.

Sheila Page, Assistant Utah Attorney General, will represent the DABC at all proceedings in this matter. Any questions concerning the merits of the case or discussions concerning possible settlement should be directed to Ms. Page, 160 East 300 South, Salt Lake City, Utah 84114 or contact her at (801) 366-0353.

Dated and mailed this 31st day of March, 2016.

A handwritten signature in black ink, appearing to read "Nina R. McDermott", written over a horizontal line.

Nina R. McDermott
Director of Licensing and Compliance
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1625 South 900 West
Salt Lake City, Utah 84104
(801) 977-6800

Certified Mail

This is to certify that I mailed, by certified mail, a copy of the foregoing "Notice of Agency Action and of Informal Adjudication and Notice of Hearing" on this 31st day of March, 2016 to:

BREWVIES

PO BOX 572068

MURRAY, UT 84157

Chris Jol

UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
Violation Screening Report

UDABC CASE NBR	<u>2016-566-L</u>	LICENSE NBR	CL01041
License Type	CL - CLUB	Complaint Type	INFORMAL

Entity Name CINEMA PUB LLC
 DBA BREWVIES
 Location Address 677 S 200 W, SALT LAKE CITY UT 84101
 Mailing Address PO BOX 572068, MURRAY UT 84157
 Contact Person
 Phone number(s) 801-322-3891
 Date First Licensed September 29, 2009 Expiration Date June 30, 2016

COMPLAINT INFORMATION

Date Received March 9, 2016 Complaint Document Issued March 23, 2016
 Source of Referral STATE BUREAU OF INVESTIGATION Reference Nbr

Date	Violation Type	Degree	Penalty Range
Feb 23, 2016	1 ATTIRE AND CONDUCT VIOLATION, VISUAL DISPLAYS, ETC	GRAVE	10 day suspension to license revocation and/or a \$1,000 TO \$25,000 fine.
<p>On or about February 23, 2016, Brewvies, a social club, showed a film, electronic reproduction, or other visual reproduction depicting: (1) an act or simulated act of sodomy, bestiality, or oral copulation, and (2) a scene wherein a person displayed their genitals in violation of Utah Code Section 32B-1-504 (7) (a) and (d).</p>			

NOTIFICATION INFORMATION

Person Notified spoke with randy miller Contact Title
 Date Notified March 16, 2016 Notified By cjohnson

PRIOR VIOLATIONS

MARGARET HARDIE is the compliance officer

NO PRIOR VIOLATIONS

C**UTAH STATE BUREAU OF INVESTIGATION****CRIME REPORT**

Incident: IU3979966

Page: 1 of 2

Report: R10395653

Case: 16INV0142

OFFENSES**ALCOHOL COMPLIANCE (9999IS.3)**

Weapon/Force: None

Motive: Alcohol Related

Activity Codes: 872.1-Covert Investigation

Loc. of Crime: 677 South 200 West Salt Lake City, UT 84101

Case Disposition: Other Service

Occurred on: 02/26/2016 At: 22:30

Occurred to: 02/27/2016 At: 00:30

Officer Activity on: 02/26/2016 At: 22:30

Officer Activity to: 02/27/2016 At: 00:30

RECEIVED

MAR - 9 2016

Utah Dept. of ABC

NARRATIVE**SYNOPSIS**

This report details the investigation into a complaint against Brewvies located at 677 South 200 West in Salt Lake City.

NARRATIVE

On 02/23/2016, I was requested to investigate a complaint that was received by our office from Margaret Hardie at DABC against Brewvies located at 677 South 200 West in Salt Lake City. The nature of the complaint indicated that Brewvies was showing a film at their location on their premises entitled "Deadpool." The complaint claimed that the film contained numerous scenes of a sexual nature that might be in violation of Utah Alcoholic Beverage Control Act - General Provisions Section. I put together an op plan to investigate this complaint for Friday 02/26/2016. I looked up the movie on the website IMDB.com (Internet movie data base online). The MPAA rating for "Deadpool" is "R" for "strong violence and language throughout, sexual content and graphic nudity." Under the "Parent's Guide" section for the movie on IMDB.com it lists a "content advisory" explaining various Sex/Nudity shown in the film which is extensive. Some of the descriptions from this advisory are used in explaining what I personally viewed.

RESULTS OF INVESTIGATION

On 02/26/2016, Agents Cannon and Williams and I entered Brewvies located at 677 South 200 West in Salt Lake City. We were advised by a male working the front check-in desk that the 8 pm showing of "Deadpool" was sold out, so we purchased tickets to the 10:30 pm showing of "Deadpool." Our ID's were checked to verify that we were 21 years old. At about 10:15 pm, we went to the bar serving area, and I ordered a Bud Light in a glass. I was served that, and I took the beer into the theater area where the movie was being shown in Theater #1. We sat down and watched the movie "Deadpool" to verify the scenes indicated in the complaint. Throughout the movie, I observed the following that are deemed violations of 32B-1-504 (General Requirements On Attire and Conduct of the General Provisions of the Utah Alcoholic Beverage Control Act):

1) 32B-1-504(7)(a)(i) - The following attire and conduct on premises or at an event regulated by the commission under this title are considered contrary to the public health, peace, safety, welfare, and morals, and are prohibited: showing a film, still picture, electronic reproduction, or other visual reproduction depicting: an act or simulated act of: sexual intercourse -

The main character (male) in the film is shown numerous times engaging in acts or simulated acts of sexual intercourse with the female counterpart during a holiday themed sex-montage. They "are shown having sex while nude (we see the woman sitting on the man's groin in bed, rocking on his lap as he fondles her bare breasts and she gasps). He is then shown behind her while she's on her hands and knees" engaged in sexual intercourse or simulated sexual intercourse.

2) 32B-1-504(7)(a)(ii) - The following attire and conduct on premises or at an event regulated by the commission under this title are considered contrary to the public health, peace, safety, welfare, and morals, and are prohibited: showing a film, still picture, electronic reproduction, or other visual reproduction depicting: an act or simulated act of: masturbation -

The main character in the film is shown on his back under bed sheets briefly engaged in masturbation or simulated masturbation using a stuffed unicorn toy.

3) 32B-1-504(7)(a)(iii) - The following attire and conduct on premises or at an event regulated by the commission under this title are considered contrary to the public health, peace, safety, welfare, and morals, and are prohibited: showing a film, still picture, electronic reproduction, or other visual reproduction depicting: an act or simulated act of: sodomy -

UTAH STATE BUREAU OF INVESTIGATION

C

CRIME REPORT

Incident: IU3979966

Report: R10395653

Page: 2 of 2

Case: 16INV0142

NARRATIVE

During the holiday themed sex montage, it shows the main character (male) nude "on his hands and knees on a bed while a woman wearing a leather bikini (with an strap-on penis that isn't shown) has her groin area pressed against the man's posterior; the camera then cuts to his face, he is sweating and grimacing as she says to relax before the scene ends. She bends down to him and says "Happy Women's Rights Day" during the sodomy or simulated sodomy scene.

4) 32B-1-504(7)(b) - The following attire and conduct on premises or at an event regulated by the commission under this title are considered contrary to the public health, peace, safety, welfare, and morals, and are prohibited: showing a film, still picture, electronic reproduction, or other visual reproduction depicting: a person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals -

As stated above, during the holiday themed sex montage, The male and female main characters "are shown having sex while nude (we see the woman sitting on the man's groin in bed, rocking on his lap as he fondles her bare breasts...)"

5) 32B-1-504(7)(c) - The following attire and conduct on premises or at an event regulated by the commission under this title are considered contrary to the public health, peace, safety, welfare, and morals, and are prohibited: showing a film, still picture, electronic reproduction, or other visual reproduction depicting: a scene wherein an artificial device or inanimate object is employed to depict, or a drawing is employed to portray, an act prohibited by this section; in this case, masturbation -

In the final credits, a drawing of the main character (male) is shown "as he rides on the back of a unicorn, he rubs its horn briefly until the horn shoots out rainbows (simulating orgasm)." The tail of the unicorn raises slowly as he rubs the horn simulating arousal until the horn shoots out the rainbows.

6) 32B-1-504(7)(d) - The following attire and conduct on premises or at an event regulated by the commission under this title are considered contrary to the public health, peace, safety, welfare, and morals, and are prohibited: showing a film, still picture, electronic reproduction, or other visual reproduction depicting: a scene wherein a person displays the genitals or anus -

"There is a long fight scene in which the main character (male) is naked. His penis is visible three times in this scene." Also, there is a scene at a strip club. "A fully nude (female) stripper is shown for about three seconds (her breasts and pubic mound are visible but hard to see due to the dimly-lit environment)."

CONCLUSIONS

All these scenes were observed by me and are accurate in the descriptions above. This film containing these scenes were shown in their entirety on the premises of Brewvies during normal business hours.

No further information

REPORTING OFFICER

Officer's Name	Badge	Signature	Printed On
Bullock, Bradley	297		03/09/2016 At: 15:04

ASSISTING OFFICERS

Agency	Officer's Name	Badge
Utah State Bureau of Investigation	Cannon, Sean	209
Utah State Bureau of Investigation	Williams, Jared	422

SUPERVISOR

Agency	Officer's Name	Badge
Utah State Bureau of Investigation	Holt, Mike	222

UTAH STATE BUREAU OF INVESTIGATION**O****OFFICER REPORT****Incident: IU4775477****Page: 1 of 2****Report: R12573660****Case: 16INV0142****DETAILS**Activity Codes: **872.1-Covert Investigation**Location: **677 South 200 West, Salt Lake City - Brewvies (CL01041)**Case Disposition: **Other Service**Occurred on: **02/26/2016 At: 22:30**Occurred to: **02/27/2016 At: 00:30**Officer Activity on: **02/26/2016 At: 22:30**Officer Activity to: **02/27/2016 At: 00:30****NARRATIVE****Supplemental Report -**

Agent Sean Cannon

Case #16INV0142

Covert Operation

Location - Brewvies 677 South 200 West, Salt Lake City, Utah (CL01041)

Synopsis -

February 26, 2016, Agents with the State Bureau of Investigation conducted a Covert operation in the Salt Lake City area. During the operation, we checked on a complaint at Brewvies. The complaint stated that Brewvies was showing a movie called "Deadpool". The complainant stated that the movie had full frontal nudity of both genders and was very raunchy amid the bloody violence.

Details:

On February 26, 2016, at approximately 1800 hours, I met with Agent B. Bullock and Agent J. Williams at the State Bureau of Investigations office located at 5500 West Amelia Earhart Dr. #100 in Salt Lake City. We started a Covert operation of local licensee in the Salt Lake City area. During this operation, we went to Brewvies (CL01041) located at 677 South 200 West, Salt Lake City.

Reason for visit:

Agents were informed of a complaint at Brewvies. I was told that the complaint came through the Department of Alcohol Beverage of Control (DABC) by email. The complainant stated that Brewvies was showing the movie "Deadpool" which had full frontal nudity of both sexes.

The other agents and I that went to the movie "Deadpool" had all seen the movie beforehand of their own free will prior to knowing of the complaint and knew of the possible scenes the complainant was talking about.

Visit at Brewvies:

We arrived to Brewvies at 2210 hours (10:10 hours) for the 10:30 late night showing. We watched as patrons ordered beer and food before entering into the theater. We sat down and noticed about 40 to 50 patrons were in the theater with us with about half with alcoholic beverages.

The movie started normally and got to the point where the main character - Wade Wilson played by actor Ryan Reynolds gets into a relationship with a female character - Vanessa played by actress Morena Baccarin. During this time of the movie, Vanessa and Wade have implied sexual contact during numerous holidays. An example of this is during "International Women's Day" Vanessa looks to be sodomizing Wade in their bed. Later in the movie, Wade gets into a fight with another character - Ajax played by Ed Skrein. During the fight, Wade's clothing comes off. Wade shows full frontal nudity during the fight scene. Later there is a short scene of Wade that showed him simulating him masturbating in his bed with a stuffed animal (Unicorn). Then again later in the movie, Wade goes to a strip club to talk to Vanessa. During the visit, there is full frontal nudity of women dancing in the foreground and background of the shots during this portion of the movie.

UTAH STATE BUREAU OF INVESTIGATION

OFFICER REPORT

Incident: IU4775477

Report: R12573660

Page: 2 of 2

Case: 16INV0142

NARRATIVE

I had seen the movie twice before. During the Brewvies showing, I did not noticed any difference in the movie "Deadpool" to remove or obscure the nudity and /or Implied sex acts.

The movie ended at approximately 0015 to 0030 hours (12:15 to 12:30 a.m.).

Movie Information:


Name - Deadpool (2016)

Rated - R

Time 1 hr 48 mins

End of report.

REPORTING OFFICER

Officer's Name	Badge	Signature	Printed On
Cannon, Sean	209		03/09/2016 At: 16:05

ASSISTING OFFICERS

Agency	Officer's Name	Badge
Utah State Bureau of Investigation	Bullock, Bradley	297
Utah State Bureau of Investigation	Williams, Jared	422

SUPERVISOR

Agency	Officer's Name	Badge
Utah State Bureau of Investigation	Holt, Mike	222